# **Explanation of Significant Differences**

To the 1991 Record of Decision for the

# **Atlas Asbestos Mine Superfund Site**

Atlas Mine Area Operable Unit EPA ID No. CAD980496863

# August 2010

#### I. Introduction

The United States Environmental Protection Agency (U.S. EPA or EPA) is completing this Explanation of Significant Differences (ESD) in order to document a significant post-Record of Decision (ROD) change to the selected remedy for the Atlas Mine Operable Unit (OU) of the Atlas Asbestos Mine Superfund Site. This change is being made in accordance with Chapter 7 of the guidance "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents" (OSWER Directive 9200.1-23P, July 1999).

The purpose of the 2010 ESD is to clarify the measures in place that ensure the Atlas Mine Area OU remains protective of human health and the environment, and that institutional controls have been implemented to the fullest extent possible while still remaining consistent with the ROD and Consent Decree language.

EPA is the lead agency for oversight of the Atlas Asbestos Mine Superfund Site. The California Department of Toxic Substances Control (DTSC) is the supporting oversight agency. EPA is issuing this 2010 ESD to satisfy its responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") Section 117(c) and the National Contingency Plan ("NCP") Section 300.435(c)(2)(i). This 2010 ESD and any comments regarding this 2010 ESD will become part of the Administrative Record for this

site pursuant to NCP Section 300.825(a)(2). Copies of the Administrative Record are available for review at the following locations:

EPA Region 9 Superfund Records Center 95 Hawthorne Street – Suite 403S San Francisco, CA 94105 (415) 536-2000

Coalinga District Library 305 N. 4<sup>th</sup> Street Coalinga, CA 93210 (209) 935-1676

Contact Information for any questions related to the Atlas Asbestos Mine Superfund Site:

Lily Tavassoli Superfund Project Manager 75 Hawthorne Street (SFD-7-2) San Francisco, CA 94105 Telephone: (415) 972-3146 Fax: (415) 947-3526

E-mail: tavassoli.lily@epa.gov

Jackie Lane Community Involvement Coordinator 75 Hawthorne Street (SFD-6-3) San Francisco, CA 94105

Telephone: (415) 972-3236 or (800) 231-3075

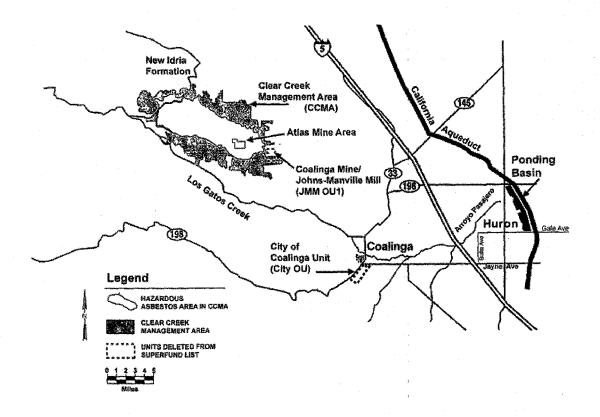
Fax: (415) 947-3526

E-mail: lane.jackie@epa.gov

# II. Site Background

The Atlas Mine Area OU is an abandoned asbestos mine within the New Idria Formation located in Central California. It is approximately 20 miles northwest of the City of Coalinga in Fresno County, California. The mine area is approximately 140 acres and is located within the Bureau of Land Management's (BLM's) Clear Creek Management Area (CCMA), which includes approximately 75,000 acres of public land. See the figure below for location information of CCMA, Atlas Mine Area OU, and other areas associated with the Atlas Asbestos Mine Superfund Site.

Asbestos mining and milling at the Atlas Mine Area occurred from 1967 to 1979. The Vinnell Mining and Minerals Corporation (Vinnell), in a joint venture with California Minerals Corporation, owned and operated the mining and milling operation from 1967 until 1974, when they sold it to Wheeler Properties. Wheeler Properties operated the facility until 1979 and filed for bankruptcy shortly thereafter. The mining activity included digging the asbestos ore out of surface pits and then milling the ore. The byproducts of the milling process (mill tailings) were bulldozed into piles near the mill building. Approximately 3 million cubic yards of asbestos ore and asbestos tailings remain at the Atlas Mine Area OU.



# III. Enforcement History and Selected Remedy

In 1976 and 1980, Atlas Asbestos Company and Wheeler Properties were cited for violating the National Emissions Standards for Hazardous Air Pollutants regulation regarding control of asbestos emissions. In 1980, the Metropolitan Water District of Southern California (MWD) determined that the Atlas Mine was one probable source of asbestos found in the California Aqueduct.

In October 1980, the Central Valley Regional Water Quality Control Board (Water Board) and the California Department of Health Services inspected the Atlas Mine Area to determine if waste discharges from these facilities were in compliance with state regulations. The Water Board concluded that additional corrective measures should be taken to prevent mine- and mill-generated asbestos from entering the drainage basins. The site was listed on the National Priorities List (NPL) in September 1984. Remedial Investigation / Feasibility Study (RI/FS) activities were initiated by the U.S. EPA in 1985.

The Record of Decision was signed on February 14, 1991. The ROD outlined the selected remedy, which aimed to control the release of asbestos into the air and local streams from the Atlas Mine Area and restrict access to the Atlas Mine Area using a combination of engineering and institutional controls. Specifically, the following measures were discussed in the ROD:

- Fencing or other appropriate controls to restrict access to the Atlas Mine Area.
- Paving the road through the Atlas Mine Area or implementing an appropriate road maintenance alternative.
- Constructing stream diversions and sediment trapping dams to minimize the release of asbestos into local creeks.
- Conducting a revegetation pilot project to determine whether revegetation is an appropriate means of increasing stability and minimizing erosion of the disturbed areas and implementing revegetation if it is found to be appropriate.
- Dismantling of the mill building and disposing of debris.
- Filing deed restrictions on privately held lands at Atlas Mine Area OU.
- Implementing an O&M program.

Atlas Minerals Division of the Atlas Corporation, Vinnell, Wheeler Properties Inc., the California Mineral Corporation, and the BLM were identified as potentially responsible parties (PRPs) at the Atlas Mine OU. General notice letters were sent on October 13, 1987 and June 23, 1988, notifying the PRPs of their potential liability.

#### IV. Cleanup and Operation and Maintenance

Remedial activities began on October 20, 1994, and were completed on November 14, 1996. The remedial action consisted of construction of stream diversions and sediment trapping dams, grading and other slope stabilization elements, performing a revegetation pilot study, road paving, mill dismantling, disposal of debris, implementing access restrictions, and implementing an O&M plan.

The Atlas Mine Area OU PRPs have conducted routine site inspections and Operation and Maintenance (O&M) activities at the Atlas Mine Area since 1996, when construction of the

remedy was completed. BLM entered into an agreement with Atlas Corporation and Vinnell to perform the operation, maintenance, and revegetation pilot study at the site. BLM is the designated O&M manager for the site and has been administering the O&M Plan. U.S. EPA is the regulatory agency responsible for oversight of the O&M work at the site.

# V. 2010 Changes to the Selected Remedy

Although the 1991 ROD called for deed restrictions to be placed on the three privately owned parcels that comprise part of the Atlas Mine Area OU, the Consent Decree required only that the Defendants (Potentially Responsible Parties or PRPs) provide notice to successors-in-title by filing a copy of the Consent Decree with the Fresno County Recorder's Office. The Consent Decree further states at page 15 that "[i]n the event of any conflict between the ROD and the Decree, the Decree shall control." This ESD therefore aims to address this discrepancy between the ROD and Consent Decree and clarify the measures that are in place to maintain the site's current and future protectiveness of human health and the environment.

#### **Current Status**

On August 13, 1992, the U.S. District Court entered the Partial Consent Decree ("CD") between Defendants, Atlas Corporation and Vinnell, and the United States for implementation of the selected remedy from the 1991 ROD. Among other response actions, the selected remedy required deed restrictions on private parcels in order to "limit use of the privately held land and prevent disturbance of the contaminated material left at the Mine Area OU." In Section VI1(A)(6) of the 1992 Consent Decree, however, the United States specifically provided that "the Defendants are not required to implement the deed restriction requirement of the Consent Decree other than as provided in Section VI (Notice of Obligations to Successors-in-Title)." Section VI only required the Defendants to file a copy of the Consent Decree with the Fresno County Recorder's Office, which was done. Specifically, an online search of the Fresno County Recorder's website reveals that the Consent Decree has been recorded with Vinnell and Atlas listed as the Grantors and the USA listed as the Grantee. As discussed below, the other two privately held parcels are ostensibly owned by Wheeler Properties, Inc., which no longer exists as a corporate entity. Moreover, Wheeler was not a party to the Consent Decree, so its name does not appear when searching the County Recorder's office for a recorded Consent Decree.

There are three privately held parcels within the Mine Area OU. The first is Assessor Parcel Number (APN) 030-250-004-0, which consists of 200 acres that span both Fresno and San Benito Counties. However, only 39.4 acres of the parcel are within the Mine Area OU and within the fence-line of the Site and thus subject to land use restrictions. Northrop Grumman Space & Mission System Corporation (Northrop), the successor to Vinnell, is the current owner of this Parcel. As the successor to Vinnell, Northrop is a party to the 1992 Consent Decree and thus already fulfilled the deed restriction terms under the Consent Decree and is not obligated to do more. If Northrop sells this Parcel, EPA will ensure that the future owner records a land use covenant ("LUC") that prevents disturbance of the contaminated material left onsite, consistent with the ROD. As detailed below, any future owner would be obligated to record an LUC in order to maintain its status as a Bona Fide Prospective Purchaser ("BFPP") and avoid liability as a PRP. If the new owner refused, it would lose its BFPP status and EPA could then order the owner to record the deed restriction, as the new owner would not be a party to the Consent Decree that currently circumvents this ROD requirement.

The other two privately-owned parcels that comprise the Atlas Mine Area OU include Fresno County APNs 45-240-09 and 45-240-12, and list Wheeler Properties, Inc. as the record owner. Each parcel is approximately 5 acres. Because Wheeler filed for bankruptcy in 1980, and was administratively dissolved in 1991, there is no discernible property owner for these parcels who could record a deed restriction. Essentially these parcels have been abandoned and there is no owner available to record the LUC.

Given the explicit deed restriction requirements in the 1992 Consent Decree and the two abandoned Wheeler properties, EPA is presently unable to implement the deed restriction provisions of the ROD. If new owners take title to these parcels, however, EPA will implement the ROD's deed restriction requirement. The new owners would either voluntarily implement deed restrictions as a "reasonable step" to obtain BFPP status (discussed below), or they would be considered a Responsible Party and would be subject to Superfund enforcement authority. In the interim, however, EPA believes that the existing institutional and engineering controls sufficiently protect human health and the environment. As noted, while there is no mechanism to require Northrop Grumman, the remaining viable Defendant to the Consent Decree, to record a deed restrictions at this time, the existing deed

notice, i.e., the recorded Consent Decree in the Fresno County Recorder's Office, already provides notice to potential buyers regarding the remaining contamination at the Mine Area OU. Engineering controls, such as fencing and sign posting, also limit human exposure to the site contamination.

The privately owned parcels are further limited from human exposure given their location within the Clear Creek Management Area (CCMA), an approximate 63,000-acre recreational area managed by the Bureau of Land Management (BLM). As of May 1, 2008, BLM temporarily closed the CCMA to all forms of public use and entry due to increased concerns about asbestos exposure in the CCMA. Subsequently, BLM issued a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) in December 2009 recommending the permanent closure of approximately 30,000 acres of serpentine soils high in asbestos fibers that has been designated as the Clear Creek Serpentine Area of Critical Environmental Concern within the CCMA. This closed area includes the Atlas Mine Area OU and, consequently, the three private parcels at issue. The public comment period for the Draft RMP and EIS ended April 19, 2010 and BLM is currently drafting a Proposed RMP/Final EIS for the CCMA, which will ultimately be followed by a final Record of Decision for the Approved RMP. Given the temporary closure and BLM's Draft RPM, it is likely the designated area will be permanently closed to the public due to unacceptably high asbestos levels. Physical exposure to the site contaminants at the Atlas Mine Area OU is, for these reasons, very unlikely.

### Future Ownership

If in the future any of the private parcels on or within the site are transferred or sold to a new owner, a deed restriction would be required for the property. The purchaser would be obligated to meet the CERCLA requirements of a Bona Fide Prospective Purchaser ("BFPP"), or a party who knowingly purchases contaminated property but does not acquire CERCLA PRP responsibility for the cleanup of that site. In order to be a BFPP, the purchaser would have to establish the following as set forth in 42 U.S.C. §101(40)(A) through (H):

# (A) Disposal at the facility occurred prior to acquisition

- (B) The person made all appropriate inquiry into previous ownership and uses of the facility in accordance with generally accepted practices and in accordance with the new standards contained in section 101(35)(B)
- (C) The person provides all legally required notices with respect to hazardous substances found at the facility
- (D) The person exercises "appropriate care" with respect to the hazardous substances found at the facility by taking "reasonable steps" to:
  - i. Stop any continuing releases
  - ii. Prevent any threatened future release
  - iii. Prevent or limit human, environmental or natural resource exposure to any previously released hazardous substance
- (E) The person provides full cooperation and access to the facility to those authorized to conduct response
- (F) The person is in compliance with any land use restrictions and does not impede the effectiveness or integrity of any institutional control
- (G) The person complies with any information request or administrative subpoena under CERCLA; and
- (H) The person is not potentially liable for response costs at the facility or "affiliated" with any such person through
  - i. Direct or indirect familial relationship or
  - ii. Any contractual, corporate or financial relationship (excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services)

The most pertinent of these provisions is Subpart (D), where the BFPP is required to exercise "appropriate care" to prevent both current exposure to existing releases, e.g., the managed waste piles, as well as prevent future releases, e.g., by using the land in a manner inconsistent with the selected remedy. EPA believes that recording the deed restriction requirement from the 1992 ROD would constitute a "reasonable step" and thus necessary to maintain BFPP status. Subpart (F) further supports implementation of the LUC, as it requires the BFPP to comply with any land use restrictions, including in this instance the deed restriction provision of the selected Remedy.

Since any future property owner would need to carry out the "reasonable step" of placing a deed restriction on the property in order to prevent CERCLA liability, it can be assumed that the site will remain protective in a situation where some or all of the private parcels in the Atlas Mine Area OU are transferred. In order to ensure that BFPP requirements have been met (i.e., a deed restriction will be implemented at the time of change in land ownership), the EPA will take steps to check on the ownership of the properties during its annual inspections of the site.

#### Conclusion

At this time, the EPA has implemented the full extent of available measures to ensure protectiveness at the site, consistent with the Record of Decision and Consent Decree. Future changes in property ownership will continue to be protective as any new owner will either be a BFPP required to record the LUC as a reasonable step, or a PRP subject to EPA's authority to unilaterally order the party to record an LUC.

# VI. Supporting Agency Comments

The supporting agency for the Atlas Asbestos Mine Superfund Site is the California Department of Toxic Substances Control (DTSC). As required by 40 C.F.R. 300.515(h)(3), EPA has provided DTSC an opportunity to review and comment on the changes in the 2010 ESD. DTSC verified on August 25, 2010, that they would not be providing formal comments on the ESD.

# VII. Statutory Determinations

The selected remedy for the site, as modified by the issuance of this ESD, satisfies CERCLA §121. The remedy remains protective of human health and the environment and complies with all applicable or relevant and appropriate requirements (ARARs) identified from federal and state laws and regulations. The remedy is cost effective and utilizes permanent solutions and alternative treatment technologies to the maximum extent possible.

# VIII. Public Participation Activities

Pursuant to 40 C.F.R. Section 300.435(c)(2)(i), a formal public comment period is not required for an ESD to a ROD when the difference does not fundamentally alter the remedial actions with respect to scope, performance or cost. This ESD does not propose a fundamental change to the remedies in the 1991 ROD with respect to scope, performance or cost, and therefore, no formal public comment period is required. EPA will make this ESD and supporting information available for public review through the Administrative Record and information repository for the Atlas Asbestos Mine Superfund Site. Additionally, EPA will publish a notice that briefly summarizes this ESD in a newspaper of general circulation in the Site community.

Kathleen Salyer

Assistant Director, Superfund Division

CA Site Cleanup Branch